

Nadler Demands Appointment of Special Counsel to Investigate Illegal Eavesdropping Operation

Sunday, 18 December 2005

WASHINGTON, D.C. — Congressman Jerrold Nadler (D-NY) today demanded that Attorney General Gonzales appoint a special counsel to investigate the President's apparent violation of law in asking the National Security Agency to eavesdrop, without warrants, on Americans' international phone calls.

In a letter to the Attorney General, Nadler pointed to the language in the Foreign Intelligence Surveillance Act that prohibits electronic surveillance without warrant of any communication "to which a United States person is a party."

"The President's speech Saturday indicates clearly that he no longer considers himself subject to the laws he is sworn to uphold," Congressman Nadler wrote. "It is unconscionable that the President would authorize the NSA to spy on Americans without legal authority, in violation of the Constitution and of the law — and that he states brazenly that he will continue to do so."

The Republican-controlled Congress has repeatedly proven its unwillingness to investigate the Administration's actions. The appointment of a special counsel would put the fact-finding mission in independent, unbiased hands. "Only in this way can we hold the President accountable and protect American liberties," Nadler wrote.

The full text of Congressman Nadler's letter to Attorney General Gonzales follows:

The Honorable Alberto Gonzales

Attorney General

Department of Justice

950 Pennsylvania Avenue NW

Washington, D.C. 20530

December 19, 2005

Dear Attorney General Gonzales:

I write to demand that a special counsel be appointed to investigate the President's secret directive that authorizes domestic eavesdropping on United States citizens, without a warrant, by the National Security Agency (NSA). This unprecedented intelligence gathering policy is clearly prohibited by law.

The Foreign Intelligence Surveillance Act (50 USCA §1809) provides that a person who “engages in electronic surveillance under color of law except as authorized by statute” is “guilty of an offense . . . punishable by a fine of not more than \$10,000 or imprisonment for not more than five years, or both.”

It further states that:

1) Notwithstanding any other law, the President, through the Attorney General, may authorize electronic surveillance without a court order under this subchapter to acquire foreign intelligence information for periods of up to one year if the Attorney General certifies in writing under oath that “ . . .

(B) there is no substantial likelihood that the surveillance will acquire the contents of any communication to which a United States person is party;” (§1802)

The President’s assertion in his weekly radio address Saturday morning that there is nothing wrong with his secret directive to eavesdrop, without first seeking warrants, on international phone calls originating in America, indicates clearly that he no longer considers himself subject to the laws he is sworn to uphold. It is unconscionable that the President would authorize the NSA to spy on Americans without legal authority, in violation of the Constitution and of the law — and that he states brazenly that he will continue to do so. His refusal to accede to the warrant process — and, therefore, to the Fourth Amendment — is an affront to the Constitution and the American people.

Neither the President himself, nor anyone else in the White House can authorize an order to spy on Americans without a warrant. Since the President stated that the Attorney General and the White House counsel were part of the decision to initiate this eavesdropping, they cannot carry out an investigation.

The President and his Administration must be compelled to obey the law and to cease violating the President’s Constitutional duty to “take care that the laws be faithfully executed.” I strongly urge you to appoint a special counsel to investigate these actions by the President and his associates. Only in this way can we hold the President accountable and protect American liberties.

Sincerely,

Jerrold Nadler

Member of Congress

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